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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,988	10/11/2001	Durward I. Faries JR.	1322.0046C	7339

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EXAMINER

BOCKELMAN, MARK

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/973,988	Applicant(s) FARIES ET AL.	
	Examiner Mark W. Bockelman	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-17, 19-22, 51-53 and 55-64 is/are pending in the application.
- 4a) Of the above claim(s) 17, 21, 53 and 56-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-16, 19, 20, 22, 51, 52, 55 and 59-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6-23-2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14, 19-20, 51, 55 are rejected under 35 U.S.C. 102(e or b) as being anticipated by Elson et al. USPN 6,248,077 or Barker USPN 4,476,877. Elson teaches a system in figures 1 that comprises a sterile medical fluid 31 in a container, a fitting (25 and opposite end) figure 2 a passageway 89, a connection port 91, a thermally conductive receptacle 95, and a temperature sensor 115 in the form of a thermistor for electronically producing a signal capable of being displayed. A securing member 23 has a recess for receiving the sensor and a locking mechanism 123 for securing the sensor to the port. An alternative embodiment as shown in figures 5 and 6 show a uniform passageway with connection port 91a and a thermally conductive receptacle 135 ad 95a that extends partially into the passageway as seen in figure 6.

Similarly Barker teaches a fluid container 12,a fitting (25 and opposite end) figure 2 a passageway 24 a connection port 30, a thermally conductive receptacle 28, and a temperature sensor 32 in the form of a thermistor for electronically producing a signal capable of being displayed. A securing member 55 has a recess for receiving the

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sensor and a locking mechanism with internal thread 50 for securing the sensor to the port. The examiner considers the passageway to be uniform in that the tapering is uniform throughout the passageway. In addition, since the receptacle 28 is tapered, only part of the receptacle extends into the passageway and thus is considered to partially extend into the passageway. It is also proximate the connection port opening since proximate is a relative term.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-16, 52, 59-64 rejected under 35 U.S.C. 103(a) as being unpatentable over by Elson et al. USPN 6,248,077 or Barker USPN 4,476,877 in view of Hudspeth et al USPN 3940742. Elson and Barker are silent as to whether the temperature sensed by their respective cardiac output monitors is display, recorder or otherwise printed however to have done so for further reference at a later date would have been obvious. Monitoring displaying recording and printing hard copies of sensed temperatures is considered notoriously old and obvious as evidenced by Hudspeth.

Claims 14-16, 19-20, 51-52, 55 and 59-64 rejected under 35 U.S.C. 103(a) as being unpatentable over Buckstein 1,479,451 in view of Barker USPN 4,476,877 and Hudspeth et al USPN 3940742. To have used the Barker fluid temperature sensor

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system in the Buckstein device for measuring temperatures of fluids would have been obvious since Barker teaches his temperature sensor system can be used in other fluid systems (column 5 lines 7-12) for measuring temperature and allowing the sensor to be reusable. To have added the functions of printing and recording would have been well known to those of ordinary skill in the art as evidenced by Hudspeth. Barker meets applicant's new claim language as noted above.

Response to Arguments

Applicant's arguments filed 6-23-2005 have been fully considered but they are not persuasive. Applicant's new claim language is not definitive enough to distinguish over the applied prior art since the art may still be interpreted to read upon the claims as explained above.

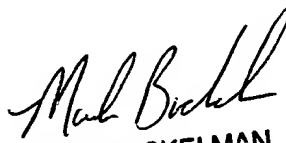
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W. Bockelman whose telephone number is (571) 272-4941. The examiner can normally be reached on Monday - Friday 10:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272 -6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MWB
September 6, 2005


MARK BOCKELMAN
PRIMARY EXAMINER